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February 9, 1998

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
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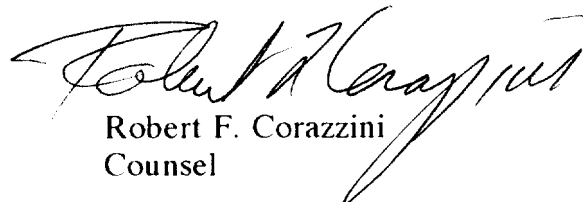
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Reply Comments in Proposed Rulemaking
MM Docket No. 97-217
File No. RM-9060

Dear Ms. Salas:

Transmitted herewith on behalf of Region IV Educational Service Center, UT Television, George Mason University Instructional Foundation, Inc., Humanities Instructional TV Educational Center, Inc., the Denver School District, Butler Community College and Minnesota Public Radio, is an original and five (5) copies of their joint Reply Comments in Proposed Rulemaking. Pursuant to the attached certificate of service, a copy of these Reply Comments have also been hand delivered to the Chairman and each Commissioner. Should there be any questions concerning this material, please communicate directly with the undersigned.

Very truly yours,


Robert F. Corazzini
Counsel

Enclosure

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Parts 1, 21 and 74 to Enable)	MM Docket No. 97-217
Multipoint Distribution Service)	
And Instructional Television Fixed)	File No. RM-9060
Service Licensees to Engage in Fixed)	
Two-Way Transmissions)	

REPLY COMMENTS

Comes now Region IV Educational Service Center, UT Television, George Mason University Instructional Foundation, Inc., and Humanities Instructional TV Educational Center, Inc., together with the Denver School District, Butler Community College and Minnesota Public Radio (collectively, the "ITFS commenting parties"), by the undersigned counsel and present their Reply Comments to the Federal Communications Commission in the above-captioned rulemaking proceeding.

On January 8, 1998, twenty (20) parties filed Comments in the above-captioned proposed rulemaking. For the most part, these Comments were generally supportive of the Commission's proposals to authorize two-way communications, cellularization and other advanced, flexible operating parameters for ITFS and MMDS facilities. There were, however, a number of specific suggestions designed to modify to varying degrees, the individual rule proposals. The ITFS commenting parties present the following Reply Comments directed toward those contested issues of significant importance to this rulemaking.

AUTOMATIC GRANT PROCESSING

In their Comments, the ITFS commenting parties urged that it was imperative that an expedited processing procedure be implemented and thus supported the automatic grant processing of applications conditioned upon protection of incumbents against any incurable harmful electrical interference as proposed by the Petitioners of this rulemaking ("Petitioners")^{1/}. Significantly, the National ITFS Association ("NIA") has, jointly with the Wireless Cable Association International, Inc. ("WCAI"), proposed that the Commission adopt rules providing for the expedited processing and granting of advanced technology MDS and ITFS applications. Other commenters, while strongly endorsing expedited processing do so while rejecting the automatic grant concept. However, it appears that these parties and perhaps the FCC as well, may have focused too greatly upon the "automatic" aspect of the Petitioners' proposal at the expense of giving full credibility to the built-in protections and safeguards in the procedure. The Petitioners did not in fact propose that the mere filing of an acceptable application result in an "automatic" grant of that application. The staff would be required to review each application to ensure that the interference analysis covers all entitled licensees and applicants; that said licensees and applicants have been served with the application; and that the application is complete. Timely objection by an affected party or the FCC staff itself would preclude a grant. Finally, of course, the grant would be nullified if actual, incurable interference occurred. Thus, the grant would be "automatic" only in the sense

^{1/} See footnote 40 of Petition for Rulemaking filed by Petitioners on March 14, 1997.

that after the staff is satisfied that all safeguards have been implemented, the application may be granted without further staff processing.

Hispanic Information and Telecommunications Network ("HITN") supports the processing procedure suggested by the Commission at paragraph no. 53 of its rulemaking proposal but objects to an automatic grant procedure because of HITN's concern as to the cost which such a procedure would impose upon ITFS entities. Initially, the flaw in the Commission's paragraph no. 53 proposal is that it relies upon a disproven and overly optimistic assumption, to wit, "If no oppositions have been filed in a particular proceeding and the Commission staff has determined that a service proposal would not cause interference in violation of [the] Rules, we anticipate that such a grant would be accomplished quickly." History has shown that this procedure, generally in use today, does not in fact result in grants being accomplished quickly. The reason for this is quite simple. Regardless of the nature of the window in which filings are permitted, more applications are filed in any given window than can be processed by the FCC staff in a reasonable amount of time. This has led to the intolerable backlogs which have occurred and will continue to occur without the implementation of a radical change. Secondly, the Petitioners' automatic grant procedure with the built in protection against harmful interference actually eliminates HITN's concern over ITFS lack of internal expertise or funding for external expertise. Given the requirement that the applicant provide notice to all interested parties, actual interference is provable as a matter of fact requiring no special expertise beyond the standard technical staff required for all ITFS

licensee operations. HITN's concern that evaluation and analysis of theoretical interference from the complex applications which are expected, may well be beyond the resources of some ITFS entities, is in fact one of the compelling reasons supporting the use of the automatic grant procedure which would also have the ancillary benefit of also freeing up the FCC engineering staff from this routine yet cumulatively time consuming process.

Likewise, the ITFS commenting parties must take issue with the University of Maryland's opposition to the automatic grant proposal based upon the University's belief that such a procedure "would be abdication of a basic Commission responsibility to issue licenses in the public interest".^{2/} That observation is a mere conclusion without any support whatsoever. On the contrary, an automatic grant system which protects the incumbent ITFS licensees and applicants from interference and results in rapid processing is ipso facto in the public interest. Indeed in paragraph no. 52 of the Commission's rulemaking proposal, the Commission recognized that the limited resources available to an ITFS party as relate to complex two-way service applications is a factor which must be considered in establishing a processing procedure for ITFS applications. In this regard, the ITFS commenting parties repeat here one of the essential points of their Comments. There exists an undeniable need to find a way to implement true expedited processing of ITFS applications. Although the Commission has many times in the past recognized this need, none of the Commission's previous

^{2/} Comments of the University of Maryland System, page 4.

processing procedures has met this need. It is clear that true expedited processing will be achieved only through a bold initiative and not merely through a retuning and tinkering with past procedures which have proven ineffectual.

The Catholic Television Network ("CTN") calls the Petitioners' proposals for application processing, "a recipe for administrative disaster" for the incongruent reason that the new cellularized, two-way applications "will produce an avalanche of paper that could easily overwhelm the Commission's resources". The avalanche of paper may be inevitable, but to date only the Petitioners' automatic grant procedure offers the prospect of ensuring that the Commission's resources are not overwhelmed. In the end, however, CTN suggests with approval the adoption of what it calls a "dual grant" procedure, which in fact is nothing more than a retooling of the automatic grant procedure. In either event, the key to true expedited processing is to reduce the burden of FCC staff review and approval. As indicated in the Joint Comments of CPB, APTS and PBS, in the real world of non-commercial ITFS operation, "the administrative process if unnecessarily complicated, could hamper the development of two-way ITFS transmission systems with unnecessary delay from regulation".^{3/}

On two ancillary issues, we must disagree with both Schwartz, Woods and Miller and the Instructional Telecommunications Foundation, Inc., ("ITF") in their suggestions

^{3/} Comments of the Corporation for Public Broadcasting, Association of America's Public Television Stations, and Public Broadcasting Service, page 13.

that the FCC should adopt rules that require performance bonds in all ITFS leases and that mandate a specific limited category of legal and engineering counsel which may be utilized by ITFS entities.^{4/} Suffice it to say that if the Commission were to begin dictating to ITFS entities which lawyers and engineers they must use, the boundary of legitimate FCC oversight and supervision would have been obliterated and would result in the very form of federal micro-management regulation to which the ITFS commenting parties strenuously objected in our initial Comments. As stated in those Comments, the ITFS parties firmly believe that we are able to make decisions in our own best interest, for our own needs, and in furtherance of the broadest public interest. Thus, we completely agree with the Alliance for Higher Education et al., in their Comments of ITFS Parties in their expression of understandable confidence that they "have found themselves to be competent to make judgements about engineering proposals proffered by wireless cable operators".^{5/} Likewise, mandated performance bonds simply serve to place the FCC in a posture of determining how the lease consideration is to be allocated. The amount of lease consideration which a wireless operator is willing to pay is limited by many factors including market size. The direct and indirect expense of a letter of credit or performance bond would serve to reduce the amount of the lease payments available to the ITFS lessor for distance learning education necessities such as computers, studio resources, etc. The ITFS commenting parties reiterate that they, not the FCC, should make the decisions concerning the financial aspects of the lease based

^{4/} Comments of Instructional Telecommunications Foundation, page 23.

^{5/} Comments of ITFS Parties, page 10.

upon each individual ITFS entity's particular needs. The NIA-WCAI Joint Statement discussed below specifically rejected a "one size fits all" approach and it is respectfully suggested that the FCC should not upset the delicate balance of that joint agreement. We cannot expect the wireless operator to both underwrite our endeavor and guarantee our success.

THE BRUTE FORCE INTERFERENCE ISSUE

Catholic Television Network has singularly introduced a concern for a perceived potential harmful interference issue which it has labeled "brute force overload" and defined as blanketing interference into non co-channel and non adjacent channel ITFS receivers. Having created a theoretical monster, CTN then proceeds with a staggeringly complicated and restrictive solution which could well result in a still birth of the basic two-way service concept. As observed by Schwartz, Woods & Miller in its Joint Comments on behalf of twenty (20) ITFS entities, the CTN proposals would not in fact serve the interests of ITFS licensees generally owing to their overly restrictive nature and the fact that they are clearly unnecessary at this time absent any supportive evidence generated by actual operation of two-way systems.^{6/} On this issue, the ITFS commenting parties wholeheartedly endorse the observations of the Alliance for Higher Education, et al., and others who have taken the position that the CTN proposal is too extreme a solution for such a manageable problem. After studying this CTN-generated issue, these commenters, both ITFS and MMDS licensees, explain that they do not

^{6/} Joint Comments, page 7.

believe the potential for brute force overload interference is as great as suggested by CTN. As the Alliance for Higher Education, et al., stated, the CTN cure would be much worse than the perceived problem. Wireless One of North Carolina, L.L.C. effectively paraphrases the basic principle set forth by the ITFS commenting parties in their original comments with its conclusion that, "Allowing the individual operators and ITFS licensees to develop solutions to this problem together on a market-by-market basis, will ensure that the best solution emerges in each market".^{7/} In fact, it appears that CTN has recognized the inherent unworkability of its original "refarming" proposal but its solution is to expand the earlier proposal.^{8/} However, it is clear that the operative word is "expanded" as CTN's latest proposal results in an even more complicated and restrictive "solution". See Catholic Television Network Comments, pages 12-15.

NIA-WCAI JOINT STATEMENT

The University of Maryland observed in its Comments that under the proposed new cellularized, two-way regime, the solution to the array of issues facing the two parties most affected lies in the agreements between ITFS licensees and system operators and that the Commission's role should be that of an overseer and protector of the public interest. That is absolutely correct as evidenced by the NIA in its Comments which described the lengthy negotiations between NIA and WCAI and presented to the Commission a Joint Statement which the two Associations believed assured that the

^{7/} Wireless One of North Carolina, L.L.C., Comments, page 14.

^{8/} Catholic Television Network Comments, page 13,

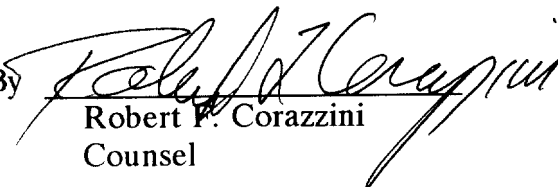
educational community reasonably shares in the benefits of the emerging use of digital and two way technology while enhancing the wireless cable industry's competitive stature in the marketplace. The ITFS commenting parties enthusiastically endorse both the effort and the result of the cooperation of the representatives of the two groups most directly affected by the proposed rules. The ITFS commenting parties believe that the Joint Statement proves beyond cavil that the ITFS licensees can exist in mutually profitable harmony with the wireless system operators while at the same time protecting the valuable resource entrusted to them by the Commission. The agreed-upon concepts represent both compromise and solution. The ITFS commenting parties urge Commission adoption of all of the joint concepts thereby not only resolving the many difficult issues raised in the proposed rulemaking but also placing its imprimatur on a blueprint for the successful implementation of future new wave technologies.

In conclusion, the ITFS commenting parties reiterate that a critical need exists for an expedited processing procedure and none of the suggestions to streamline the current procedure, including that of the Commission, would in fact result in an assured expedited processing of ITFS applications. Although some parties have objected to the Petitioners' automatic grant proposal, none has come up with a showing that the proposal would result in a specific detriment to incumbent ITFS licensees and applicants and none have come up with a truly different procedure which would attain the desired results. Additionally, the CTN brute force issue is premature in its conception and is unmanageable and unworkable in its solution. Finally, the NIA-WCAI Joint Statement

of Position does indeed represent the best efforts of the ITFS and wireless cable interests in cooperatively resolving the host of issues and as such is entitled to significant weight by the Commission.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Robert F. Corazzini, on behalf of Region IV Educational Service Center, UT Television, George Mason University Instructional Foundation, Inc., Humanities Instructional TV Educational Center, Inc., Denver School District, Butler Community College and Minnesota Public Radio, certify that a copy of the foregoing Reply Comments were delivered by hand (*) or via First Class United States Mail, postage prepaid, to the following on February 9, 1998:

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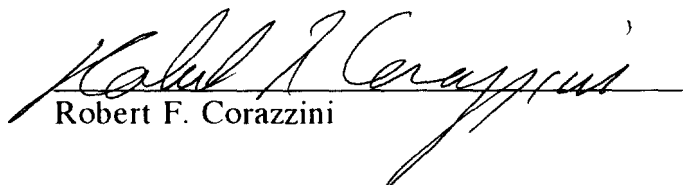
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